Supreme Court, U.S.
FILED

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No. 01-

In The

Supreme Court of the United States

Tod N. Rockefeller
Petitioner,
v.

State of New Mexico (NM), New Mexico Environment Department (NMED), and Peter Maggiore in his official capacity as Secretary of the NMED,
Respondents.

On Petition for Writ of Certiorari to the Supreme Court of the State of New Mexico

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PETITION FOR WRIT OF CERTIORARI
APPENDIX - VOLUME
No. 6 & 7

Tod N. Rockefeller, pro se
319 Sunnyview St.
Carlsbad, NM 88220
(505) 628 - 3541

APPENDIX - 6

Pages 1 thru 18

IN THE COURT OF APPEALS
OF THE STATE OF NEW MEXICO

TOD N. ROCKEFELLER,
Appellant,
vs.

STATE OF NM, NMED, and
PETER MAGGIORE in his official
capacity as Secretary of the NMED
Appellees.

No. 20,980; HRM 98-04 (P) ; Served - 2/7/01

MOTION FOR REHEARING AND ORAL ARGUMENT

An Order and Notice of Proposed Summary Disposition (hereafter "Proposed Dismissal") was filed by the Court on 9/6/00 for the case captioned above. Appellant responded with a Memorandum in Opposition to Proposed Summary Disposition (hereafter "Memo") served on 10/25/00. The Court issued its judgement upon the Proposed Dismissal within a Memorandum Opinion (hereafter "Dismissal") filed on 1/30/01.

Upon review of the content of the Proposed Dismissal, Appellant found it disturbing and biased against him with several misstatements. The Proposed Dismissal, however, paled in comparison to the Dismissal's false statements and clearly demonstrated bias against Appellant as will be detailed below. Appellant is now shocked by this Court's unbridled unfairness towards him. Within Appellant's Memo, only one of several

misstatements were addressed within the Proposed Dismissal. This was concerning "violation 11" of an alleged false statement and representation having been made by the United States Department of Energy ("DOE") on 2/26/99 (Memo at 12, 13).

Specific clear and convincing documented evidence was included with this allegation (DOE Surveillance Report S-97-23 and much more totaling 21 pages) to substantiate Appellant's "testimony" [R.P. 2058-70, 2074-79]. Appellant's cross-examination excerpt cited was only two questions, and the balance of his "testimony" only explained the relevance of the 21 pages of documented evidence included. The facts within the DOE's own surveillance report itself established that the bogus "severe safety deficiency", which supposedly could have resulted in "FATALITY", was only a "tripping hazard" at worst (Emphasis added). The contractor laboratory employee's (Dr. Chen's) reported testimony to Appellant even established the alleged "tripping hazard" as bogus. Besides being an alleged false statement made under oath by the DOE and violation of NMSA 30-25-1, it is also hard evidence supporting the alleged DOE reprisals against Appellant for whistleblowing which violates the Employee Protection Provisions of the Solid Waste Disposal Act ("SWDA"). See 42 U.S.C. § 6971.

Federal Statutes are Applicable to WIPP State Permitting

There was a question also concerning this Court's alleged limited jurisdiction concerning federal law applicable to the DOE's Waste Isolation Pilot Plant ("WIPP") Project. The question to ask is, does this Court have jurisdiction over the New Mexico state hazardous waste permitting proceedings of this case ? Obviously yes.

New Mexico ("NM") was granted an "authorized state hazardous waste program" by the Environmental Protection Agency ("EPA") under the authority and control of the SWDA. The "state program" must be "equivalent to the federal program". See 42 U.S.C. § 6926 and **Exhibit CR-1**. What this means is that wherever federal requirements are **not** outlined within NM law, the requirement refers back to the federal statutes for hazardous waste management. This is a very simple, basic, and common principle of **any** kind of federally approved state program. Appellant is almost shocked that this Court claims **not** to be aware of these basics.

This Court had attempted to dismiss Appellant's cross-examination, described above, as being dispelled by the Hearing Officer as "improper cross-examination" (Proposed Dismissal at 6). Next, this Court also claimed that such "scientific or technical" testimony could be disregarded by a fact finder (Proposed Dismissal at 5). Appellant dispelled both of these claims of the court concerning his cross-examination excerpt described above (Memo at 12, 13). The alleged DOE false statement along with Appellant's two cross-examination questions are NOT "scientific or technical" in nature, and were NOT ruled as "improper cross-examination" by the Hearing Officer.

This Court's Dismissal continues to claim that the DOE's apparent false statements while under oath in this instance are still alleged to be in question. It is noted that: "A fact finder can always evaluate the credibility of witnesses and determine where the truth lies." There is **NO credibility factor of witnesses** within the **21 pages of evidence** supporting Appellant's allegation of DOE false statements while under oath. E.g. DOE's own letters and report, former Energy Secretary

O'Leary's 5/14/98 Declaration excerpt, and Government Accountability Project's (GAP's) web page. This web page of GAP concerns the DOE's horrible treatment and reprisals towards Nuclear Waste Courier, James Bailey, resulting in the painful death of his late infant baby daughter Kelly and his own "chromosonal damage consistent with radiation exposure." DOE has a long established history of reprisals.

In addition to all of the demonstrated non-impartial treatment of Appellant above, there are serious misstatements within the Dismissal such as: "Appellant continues to make conclusory allegations" and "Appellant . . . presented mere conflicting testimony . . .". All that the Dismissal discusses of Appellant's 15 "violations" outlined are three areas of alleged false statements (Dismissal at 3, 4). Appellant's "violations" 3, 5, & 6 involve a specific Imminent Hazard of the WIPP RH-72B nuclear waste shipping cask's design failure concerning a faulty (Clean Air Act ("CAA") violation) Radioactive Containment Seal, another **specific** alleged CAA violation of faulty air monitoring of radionuclide aerosols about the WIPP Site, and possible DEATH of workers within the WIPP repository arising from specific alleged Inadequate Fire Protection respectively (Memo at 2, 3, 6, 8, & 9).

Appellees Exclude Evidence

Specific clear and convincing documented objective evidence supporting these allegations above is within the five attachments (not exhibits) listed on R.P. 2030 (Index of Attachments to Appellant's 9/1/98 sworn WIPP Declaration). See Exhibit CR-2. Appellant filed , on 10/5/00, a Motion to Include Evidence into the Record Proper.

which was Inexplicably Excluded (hereafter "Excluded Evidence Motion"). Appellant's Excluded Evidence Motion describes the evidence in question very **specifically** with reference to R.P. 2030 as the Index of Attachments (on R.P. 2030, the attachments are listed by title and numbered as A-1, A-2, B, C, & D). Appellant also noted that: "1) After R.P. 2030: Five exhibits" (should be attachments) "which were part of Appellant's written 1/14/99 Technical Testimony **(which were within "Exhibit CH-4C")**." See Excluded Evidence Motion at 1 and **Exhibit CR-2 to this motion.** Appellees responded to the Excluded Evidence Motion by stating that: "Appellees believe the documents are part of the record proper and **do not object** to the inclusion of these documents in the event these documents were inadvertently not placed in the record proper. For the convenience of the Court, the documents are attached." See Appellees' Response to Motion to Include Evidence into the Record Proper at 2 (hereafter "Appellees' Response").

The Appellees' Response had Appellant's Exhibits CH-1 thru CH-5 from his 1/14/99 Technical Testimony included, which were NOT the five items **"(which were within "Exhibit CH-4C")"** , obviously. While there was an error with the use of the word "exhibit" rather than "attachment" ; "within "Exhibit CH-4C"" could not possibly mean Exhibits CH-1 thru CH-5 as Appellees had reflected and have attempted to claim that they interpreted from Appellant's Excluded Evidence Motion. Within Exhibit CH-4C is the Index of Attachments which lists the five items in question. If the Appellees had doubts about what documents were referred to by Appellant, why did they not telephone to insure that they knew accurately what documentation was in question ? No contact was made by Appellee. This **fact** is indicative of motive.

Possible Tampering with Evidence

Appellant obtained evidence to provide to this Court from all three New Mexico Public Interest organizations, that were parties to the WIPP state hazardous waste permitting proceedings. All of these organizations had no trouble locating the evidence in question above that they were served with on only one occasion. See Exhibit CR-3. Appellees were served with this 9/1/98 sworn Declaration, with all five attachments, on two occasions by Appellant (during 9/98 and 1/99).

It is certainly quite possible that Appellees engaged in criminal tampering with evidence. The five attachments in question were, without any doubt, specifically part of the permitting proceedings for the WIPP state hazardous waste permit. A motion to include this evidence should not be necessary because they were already stipulated by both parties to be part of the record proper. See Appellant's Praecipe of Calling for Less Than The Entire Record served on 3/21/00. For this Court to exclude this evidence under these circumstances would be contrary with Due Process of law required by both the New Mexico and U.S. Constitutions.

Oral Argument

This Court granted Oral Argument for the DOE and Appellees concerning the identical NM state permitting proceedings for the WIPP Project (Case No. 99-20877). For this instant appeal (99-20980), there are very serious unanswered questions described above relating to public safety and environmental integrity. There are not many cases within this Court that involve such serious matters that are so widespread in possible effect.

E.g.: the WIPP Projectmanages the National Transuranic Waste Program involving 23 other sites spread over 14 states.

So, this appeal not only potentially affects thousands of New Mexicans, but literally many thousands of other American citizens and workers. This Court, under these circumstances, is obligated to do its very utmost to insure that the public's safety is not overlooked. Henceforth, an Oral Argument is being requested by Appellant to responsibly discuss and hopefully develop a solution to the safety issues within this appeal.

Prayer for Relief

For the reasons outlined above, Appellant prays that this Court place a stay on its Dismissal of this instant appeal, restore the excluded / omitted evidence that already was stipulated to be part of the Record Proper, and grant the Motion for Rehearing and Oral Argument. The Constitution of the State of New Mexico notes:

> **"the courts must not only be impartial, unbiased and fair, but, in addition, no suspicions to the contrary may be permitted to creep in. State ex rel. Anaya v. Scarborough, 75 N.M. 702, 410 P.2d 732 (1966)."** See NMSA 1978 Constitution of the State of NN

Appellees were contacted and oppose this motion.

In accordance with 28 U.S.C. § 1746 and 18 U.S.C. § 1001, I declare under penalties of perjury that the above statements are true and correct to the best of my knowledge, information and belief.

Dated: February 7th, 2001

Respectfully submitted,

s/Tod N. Rockefeller, *pro se*

319 Sunnyview Street
Carlsbad, NM 88220
(505) 628 - 3541
(Unlisted # due to Harassment Calls)

AFFIDAVIT OF SERVICE

Tod N. Rockefeller, being duly sworn, states that he mailed this true and correct copy of the foregoing Motion for Rehearing to:

Deputy Secretary Paul R. Ritzma
New Mexico Environment Department
1190 St. Francis Drive
Santa Fe, NM 87502

New Mexico Environment Department
Susan McMichael, Richard Mertz
P.O. Box 26110
Santa Fe, NM 87502

New Mexico Court of Appeals
Patricia C. Rivera Wallace, Clerk
Case No: 99-20980
237 Don Gaspar Ave., Rm. 116
Santa Fe, NM 87501

with sufficient first class postage attached thereto on this 7th day of February, 2001.

s/Tod N. Rockefeller

Subscribed and sworn to before me this 7th day of February, 2001

My commission expires: February 16, 2002

s/Brenda A. Johnson
Notary Public

Seal: Brenda A. Johnson, Notary Public,
State of New Mexico

Exhibit CR-1
of Appendix - 6

The relevant portions of this exhibit contain the following:

From the U.S. Code Online via GPO access [Laws in effect as of Jan.6, 1999]

Title 42 – The Public Health and Welfare
Chapter 82 - Solid Waste Disposal
Subchapter III - Hazardous Waste Management
Sec. 6926. Authorized State hazardous waste programs
(b) Authorization of State program

Such State is authorized to carry out such program in lieu of the Federal program under this subchapter in such State and to issue and enforce permits for the . . . disposal of hazardous waste . . . equivalent to the Federal program under this subchapter . . ..

NEW MEXICO STATUTES
1978 ANNOTATED
Chapter 74
Environmental Improvement
Pamphlet 120

Seal: Great Seal of the State of New Mexico * 1912 *

2000 REPLACEMENT PAMPHLET

74-4-4. Duties and Powers of the board.

A. The board shall adopt regulations for the management of hazardous waste . . that are equivalent to and no more stringent than federal regulations adopted by the federal environmental protection agency . . ..

NM ADMINISTRATIVE CODE (NMAC)
TRANSMITTAL FORM

File Stamp: Filed With State Records Center 2000 May 15 PM 2:42

NMAC Title No.20: Environmental Protection

NMAC Chapter No.4: Hazardous Waste

NMAC Part No.1: Hazardous Waste Management

Effective Date of Rule: 6/14/2000

s/Jimi S. Gadzia
Chief, Environmental Improvement Board

Date Signed: 5/12/00

- -

NMAC 20.4.1.1100 COMPLIANCE WITH OTHER REGULATIONS. Compliance with this part does not relieve a person of the obligation to comply with all other applicable state and **federal** regulations.

File Stamp: Filed With State Records Center 2000 May 15 PM 2:43.

Exhibit CR-2
of Appendix - 6

The relevant portions of this exhibit contain the following:

Violations of Environmental, Health and Safety Laws and Standards By Dept. of Energy's Waste Isolation Pilot Plant (WIPP) Project Declaration of Tod Rockefeller former Environmental Scientist Department of Energy, Carlsbad Area Office (CAO) September 1, 1998

I make this declaration to notify the State of New Mexico of the following safety risks/violations, environmental law violations, and violations of the New Mexico Hazardous Waste Act (NMHWA) concerning the DOE's WIPP Project in Carlsbad, New Mexico. These allegations that I make need to be reviewed and investigated for validation. I can provide assistance and testimony to accomplish this.

A. WIPP RH-72B Shipping Cask Potential Clean Air Act (CAA) Violation and Potential Imminent Danger (Potential Compromise of Containment Seal).

B. DOE Cover-up of Environmental Monitoring Errors from the EPA.

C. WIPP RCRA Part B Permit Application/ Clean Air Act Violations.

D. Westinghouse, Waste Isolation Division's (WID) Violation of a Mine Safety and Health Administration (MSHA) Safety Regulation.

E. DOE/WID Violation of a DOE Safety Incident Reporting Regulation (DOE Order 5000.3B).

A. RH-72B Shipping Cask

Attachment A-1 is the first of five attachments which each support what I state within this declaration and clearly demonstrate my honest concern for safety. This review of mine was of WID's draft Comment Resolutions for the Safety Analysis Report for Packaging (SARP) of the proposed shipping cask for transporting high level radioactive waste to the WIPP Site over our nation's highways. This cask has serious implications for Clean Air Act compliance and trucking safety. I was temporarily assigned to work on the approval of this SARP by from 6/95 to 11/95. In 4/96 I was assigned to the CAO's Assurance Team (QA), but still received a copy of the WIPP contractor's draft Comment Resolutions to the SARP. As soon as I looked at these draft Comment Resolutions major problems immediately became apparent to me. Because of this I began my review, even though it was an area that I was no longer assigned to. Soon after I called the WIPP contractor to obtain Nuclear Regulatory Commission (NRC) Regulatory Guides, necessary for my review, I received four new atypical work assignments from my Team Leader. Along with the new work assignments came the comment that I would have to "put the SARP review on hold." Besides my difficulty in obtaining the necessary NRC Regulatory Guides and the new work assignments and comment, the fact that the NRC Guides not being readily available is an indicator. No satisfactory Department of Energy review of the SARP

T. ROCKEFELLER
WIPP PROJECT DECLARATION

INDEX OF ATTACHMENTS

A-1 4/18/96 RH-72B SARP draft Comment Resolutions Review - Bolt Issue

A-2 Round 1 Questions, RH-72B SARP/ WID draft Comment Resolutions (with my working notations)/ O-ring Issue

B. Outline of Attempts to Issue CAO Corrective Action Report 97-001, then 97-007. 10/21/96 Version of draft CAR 97-001 Included

C. Draft/Final Excerpts of the WIPP Environmental Monitoring Plan for CY 1996 (WIPP RCRA Part B Permit Application Appendix D-5)

D. 4/26/95 CAO Assessment Report/ WID's 5/18/95 Response/ 11/3/95 Ltr. To CAO Legal Counsel

CERTIFICATE OF SERVICE

I certify that the attached documentation was sent via regular mail, unless otherwise indicated below, this 3rd day of September, 1998 to each of the following:

Peter Maggiore, Secretary; R. Mertz, Counsel; S. Zappe; NM Environment Depart. P.O. Box 26110 Santa Fe, NM 87502 (505) 827-1561

Thomas Udall, NM State Attorney General, also Lyndsay Lovejoy & Geoff Fettus P.O. Drawer 1508 Santa Fe, NM 87504-1508 (505) 827-6695

Caron Balkany & Suzanne Westerly, Concerned Citizens for Nuclear Safety 107 Cienega St. Santa Fe, NM 87501 (505) 986-1973

Janet Greenwald & Pia Gallegos, Citizens for Alternatives to Radioactive Dumping 144 Harvard SE Albuquerque, NM 87106 (505) 266-2663

Don Hancock, Southwest Public Information & Research Center P.O. Box 4524 Albuquerque, NM 87106 (505) 262-1862

Edward Slavin, Jr., Attorney 35 SE 8th Terrace Deerfield Beach, Florida 33441 (954) 725-0094

s/Tod N. Rockefeller
319 Sunnyview St.
Carlsbad, NM 88220
(505) 887-7461

Exhibit CR- 3
of Appendix - 6

AFFIDAVIT OF ACKNOWLEDGMENT

Don Hancock, Director of the Nuclear Waste Safety Program of Southwest Research and Information Center, hereby affirms that he was served with Tod N, Rockefeller's written technical testimony, dated January 14, 1999. The Technical Testimony was submitted regarding the New Mexico Environment Department's Hazardous Waste Act permit proceedings for the Waste Isolation Pilot Plant. The testimony included exhibits and attachments. There were five attachments that total 30 pages and were labeled as Attachments A-1, A-2, B, C, and D.

s/Don Hancock Date: 12/26/2000

The foregoing affidavit of acknowledgment was signed before me on this 26th day of December, 2000.

s/Karen Hughes

My commission expires: 6/2/2004

Seal: KAREN HUGHES, NOTARY PUBLIC,
STATE OF NEW MEXICO

AFFIDAVIT OF ACKNOWLEDGMENT

I, Joni Arends, Waste Programs Director for Concerned Citizens for Nuclear Safety (CCNS), being duly sworn, state that I was served with Tod N. Rockefeller's written Technical Testimony dated January 14, 1999. The Technical Testimony was for the Hazardous Waste Act application by the U.S. Department of Energy for its Waste Isolation Pilot Plant (WIPP) facility. Furthermore, within Exhibit CH-4C of Mr. Rockefeller's testimony was Mr. Rockefeller's September 1, 1998 sworn Declaration that included five attachments. The five attachments, which totaled 30 pages, were enclosed with and were part of the Declaration and were labeled as Attachments A-1, A-2, B, through D.

Dated: January 8, 2001. s/Joni Arends

ACKNOWLEDGMENT

STATE OF NEW MEXICO}
COUNTY OF SANTA FE }

The foregoing instrument was acknowledged before me this 8th day of January, 2001, by Joni Arends.

s/Jennifer Koomoa, Notary Public

My commission expires: Aug. 15, 2004
Seal: Official Seal, Jennifer Koomoa, Notary Public, State of New Mexico

AFFIDAVIT OF ACKNOWLEDGMENT

Janet Greenwald a member of Citizens for Alternatives to Radioactive Dumping (CARD), being duly sworn, state that she and CARD had been served with Tod N. Rockefeller's written Technical Testimony dated January 14, 1999. The Technical Testimony was towards the New Mexico Environment Department's NM Hazardous Waste Act permitting proceedings of the United States Department of Energy's Waste Isolation Pilot Plant Project. Furthermore, that within Exhibit CH-4C of this testimony was a 9/1/98 sworn Declaration of Mr. Rockefeller that included five attachments. The five attachments, which totaled 27pages, were enclosed with and were part of the Declaration and were labeled as Attachments A-1, A-2, B, thru D.

s/Janet Greenwald Date: Dec. 15, 00

ACKNOWLEDGMENT

STATE OF NEW MEXICO }
}SS
COUNTY OF BERNALILLO}

The foregoing instrument was acknowledged before me this 15th day of December, 2000, by Janet Greenwald.

s/Becca Jay S. Wieder

My Commission expires: November 6, 2003.

Seal: Becca Jay S. Wieder, Notary Public
State of New Mexico.

APPENDIX - 7

Pages 19 thru 64

Violations of Environmental, Health and Safety Laws and Standards By Department of Energy's (DOE's) Waste Isolation Pilot Plant (WIPP) Project
Declaration of Tod Rockefeller
former Environmental Scientist
DOE, Carlsbad Area Office (CAO)
September 1, 1998

I make this declaration to notify the State of New Mexico of the following safety risks/violations, environmental law violations, and violations of the New Mexico Hazardous Waste Act (NMHWA) concerning the DOE's WIPP Project in Carlsbad, New Mexico. These allegations that I make need to be reviewed and investigated for validation. I can provide assistance and testimony to accomplish this.

A. WIPP RH-72B Shipping Cask Potential Clean Air Act (CAA) Violation and Potential Imminent Danger (Potential Compromise of Containment Seal).

B. DOE Cover-up of Environmental Monitoring Errors from the EPA.

C. WIPP RCRA Part B Permit Application/ Clean Air Act Violations.

D. Westinghouse, Waste Isolation Division's (WID) Violation of a Mine Safety and Health Administration (MSHA) Safety Regulation.

E. DOE/WID Violation of a DOE Safety Incident Reporting Regulation (DOE Order 5000.3B).

A. RH-72B Shipping Cask

Attachment A-1 is the first of five attachments which each support what I state within this declaration and clearly demonstrate my honest concern for safety. This review of mine was of WID's draft Comment Resolutions for the Safety Analysis Report for Packaging (SARP) of the proposed shipping cask for transporting high level radioactive waste to the WIPP Site over our nation's highways. This cask has serious implications for Clean Air Act compliance and trucking safety. I was temporarily assigned to work on the approval of this SARP by from 6/95 to 11/95. In 4/96 I was assigned to the CAO's Assurance Team (QA), but still received a copy of the WIPP contractor's draft Comment Resolutions to the SARP. As soon as I looked at these draft Comment Resolutions major problems immediately became apparent to me. Because of this I began my review, even though it was an area that I was no longer assigned to. Soon after I called the WIPP contractor to obtain Nuclear Regulatory Commission (NRC) Regulatory Guides, necessary for my review, I received four new atypical work assignments from my Team Leader. Along with the new work assignments came the comment that I would have to "put the SARP review on hold." Besides my difficulty in obtaining the necessary NRC Regulatory Guides and the new work assignments and comment, the fact that the NRC Guides not being readily available is an indicator. No satisfactory Department of Energy review of the SARP

could ever be done without the NRC Guides. To obtain these Guides, I had to state that I would get them from the NRC myself, if not supplied. Shortly after this, I obtained what I needed. What does this fact communicate?

Since my workload drastically changed, I had to do some of my work on the four new assignments on my own personal time. I wanted to get back to my SARP review because I felt that it was important to the project, there were significant safety deficiencies that could affect environmental compliance, and I had such a strong desire to contribute. My review was not easy to complete on my own, especially considering my other work and the intense scrutiny that it would certainly be subjected to, but I worked hard and completed it nonetheless. I outlined fourteen comments as not being resolved, but number 2.3 is most significant. Comment 2.3's significance lies in its history. The last page of my review itself is an attachment outlining my attempt to resolve this comment five months earlier in November of 1995. The fact of the matter is that my review pointed out the former CAO manager,
George Dials' violation of DOE Order 5480.3 par. 6.2.(c). This safety regulation requires "Heads of Field Organizations" to "Perform an independent objective review and evaluation of contractors' safety analysis reports for packaging designs."

I was never given any opportunity to review how the safety issue concerning the bolts for this ~~cask~~ was allegedly resolved. There is no evidence to lead me to believe that this issue does not represent an Imminent Danger to the residents of New Mexico.

Also, during my 4/96 review of the WID Round 1 draft Comment Resolutions for the SARP of the RH-72B cask, I identified another safety deficiency. This issue is related to the potential **compromise of the Containment Seal** of this cask in addition to the bolts. What I am referring to, which was allegedly to be resolved by WID and Packaging Technologies, Inc., was concerning the minimum compression of the cask's O-rings to maintain the Containment Seal. I pointed out a cask dimensional error which would, from my specific calculations, not allow the O-rings to reach the minimum compression required. The WIPP Project had at least five engineers (3 WID & 2 Pac Tech) involved with working on the RH-72B cask. From 11/14/95 to 4/18/96 all of these engineers failed to properly resolve Comment 2.16 (not 2.17 - see Pac Tech's 4/11/96 FAX, Attach. B) concerning these O-rings and the cask's ability to maintain an adequate Containment Seal during normal operating conditions. The WIPP claims to have such a thorough system and program of quality control. These two issues above put all WIPP Quality Assurance actions and responsibilities in question. Did anyone, associated with the WIPP Project, check any of the WID RH-72B SARP Round 1 draft Comment Resolutions aside from myself prior to 4/18/96 ?

In any professional organization, other than those operating and managing the WIPP Project, an individual who reviews a plan, document, or report and makes comments; receives copies of the proposed/draft resolutions towards the comments made for review and validation. I was the individual who possessed the expertise and who made the effort to

make the 4/18/96 comments concerning the RH-72B shipping cask SARP, yet I was never allowed to review and validate any of the resolutions. Why was this done ? The safety issue resolutions concerning the RH-72B's bolts and O-rings should be validated by the State of New Mexico. Otherwise, there is a potential Imminent Danger to the residents of this state.

As an example of the difficulty and care which must be taken in resolving such matters, are serious problems with the casks being used to store spent nuclear fuel. Reported by the National Conference of State Legislatures in their High-Level Radioactive Waste Newsletter was an article describing the NRC's difficulties with the cask manufacturer. The NRC has issued a demand for information to the Sierra Nuclear Corporation due to design and fabrication problems with the VSC-24 spent-fuel dry-storage casks. The NRC said, "Numerous NRC inspection findings indicate that since 1992, Sierra Nuclear's quality assurance and corrective action programs have failed to identify and correct design control and fabrication deficiencies." Further information on this is available via the Internet at http://www.nrc.gov/OPA/reports/cask.htm.

I have pointed out two serious design problems with the WIPP RH-72B shipping cask that are related to maintaining the Containment Seal. This is most

important and it would be in the public's best interest to independently evaluate what I have brought to light. Does the State of New Mexico need to become involved with problems, after it is too late, with the WIPP RH-72B cask that are similar to the NRC's difficulties described above ?

B. DOE Cover-up of Material Facts concerning Environmental Monitoring Errors from the EPA

The draft CAO Corrective Action Report (CAR) which I had attempted to issue (CAR 97-001) was concerned, in part, with errors involved with monitoring of liquid radiological effluents at the WIPP Site. The CAO went to great lengths over two months to prevent the issue of this CAR. This was done to cover-up these material facts, related to environmental monitoring errors, from the EPA. The DOE's activities here relate to an allegation of the criminal violation of Title 18 United States Code, Section 1001. I can provide, explain, and testify to all of the attachments associated with this violation listed within Attachment B, if the need arises.

C. WIPP RCRA Part B Permit Application/ Clean Air Act Violations

I performed the primary review for the CAO of the WIPP Environmental Monitoring Plan (EMP) due to my assigned areas. The EMP is Appendix D-5 of the WIPP RCRA Part B Permit Application to the New Mexico Environment Department (NMED). There were no problems, other than two editorial corrections that I noted, in the draft EMP DOE/WIPP 96-2194. This did not last, however, when I was giving the final EMP a quick review shortly after I received it. It turns out that a 72 hour radon 'cool-down' that was in the draft EMP,

for initiation of decay counting of air monitoring filters, had been removed from the final version without my knowledge from section 5.3.2.. I also reviewed all of the associated operational procedures to find an absence of a 'cool-down' specified also. Once I was aware of this,

however, I was afraid to bring it up to the CAO managers. I did not know if there was some kind of hidden agenda again as with the RH-72B cask.

There are two radon isotopes, radon-220 and radon-222. The problem that radon causes with air monitoring of radionuclides suspended in the atmosphere is due not to radon itself, but to its decay daughters. Radon is a gas, but its decay daughters are electrically charged and adhere to air sampling filters. This condition requires a radon 'cool-down' of at least 48 hours prior to initiating a decay count of the filter to obtain accuracy. Radon-222 is not a problem due to the half-lives of its decay daughters totaling less than one hour. However, radon-220's decay daughter half-lives total close to eleven hours, therefore . . . the radon 'cool-down'.

This condition represents a violation of the Clean Air Act (CAA), National Emission Standards for Hazardous Air Pollutants (NESHAPS), 40 CFR Section 61.93 (b) Emissions Monitoring . . ..

Also, the detection of potential accidental releases of radionuclides at the WIPP is compromised, which amounts to possible Reckless Endangerment, or at the very least Negligent Endangerment of the workers at the WIPP repository and nearby residents.

D. Westinghouse WID's Violation of a Mine Safety and Health Administration (MSHA) Safety Regulation (30 CFR Subpart C, Section 57.4200 (b)(2))

This violation was outlined within a 4/26/95 CAO Assessment Report of WID Hazardous Waste Operations (CAO:TNR 95-1138). Observation / Finding 2, noted that: "2. Satellite Accumulation Area (SAA) No. 7B (underground), which stores flammables, had no fire extinguisher within sight or a sign directing an operator to one."

WID's response dated 5/18/95 (WS:95:03323, DA:95:2348) states that: "A fire extinguisher is located at the intersection of the E300/N260 drift. This fire extinguisher is visible from SAA No. 7B." The SAA No. 7B was located at least 30 feet from "the intersection of the E300/N260 drift." To be visible from this SAA, the fire extinguisher would have had to have been hanging from the ceiling of the middle of the drift intersection. It was actually located around the corner of the intersection out of sight.

When the assessment was conducted during 3/23 and 3/24/95, the Observation/Finding described above was verified and validated by a CAO coworker and WID employee at the SAA No. 7B location. WID's denial of this deficiency prevented outlining of its cause and to implement steps to prevent it from occurring again. Since any fire within an

underground facility can be potentially the cause of loss of life, WID's denial of this serious safety violation should be considered Negligent Endangerment of the workers within the WIPP repository.

Any fire, especially of a container containing flammables, in the underground just might cause panic if there is no fire extinguisher within sight of the fire. In worst case people could die. A fire extinguisher was not "strategically located" as 30 CFR 57.4200 (b)(2) requires. WID's response noted that "SAA No. 7B was permanently deactivated on May 12, 1995.", but I was

still quite concerned about the deficiency. I brought the subject up with WID managers and my CAO supervisor several times, but the denial just continued. On 10/27/95 I brought the matter to the attention of the former CAO manager George Dials, and also within a 11/3/95 letter to the CAO Legal Counsel, Cooper Wayman. Please reference Attachment D. All of these efforts of mine were ignored.

Additional Examples of the DOE and WID's Trend of Covering-up Safety Issues

Two newspaper articles published in the Carlsbad Current Argus depict the DOE and WID's efforts to cover-up material facts related to safety. The first article titled WIPP Critic Asked to Talk dated 6/18/82 notes:

> SANTA FE (AP) - A consulting engineer who has criticized tests conducted at the proposed Waste Isolation Pilot Plant near Carlsbad has been asked to present his case before a state task force.
>
> Richard Murphy contends technical evaluations of the proposed low level nuclear waste disposal site were conducted improperly . . .
>
> State Health and Environment Secretary George Goldstein said he has sent a letter asking Murphy appear before the state's environmental evaluation group, . . .
>
> Murphy also said reports on the site failed to include comments about pockets of toxic hydrogen sulfide gas.
>
> " . . . The gas is toxic, but it does not represent as great a danger as some people would believe," Goldstein said.

Despite the knowledge of the potential presence of pockets of toxic hydrogen sulfide gas not representing a major risk or danger, the information was omitted from the WIPP technical evaluation.

These facts that were omitted in this report alone, would not represent anything significant. It could have just been a simple oversight or error. However, when this instance is combined with numerous other instances which are quite similar, a trend is clearly established.

E. DOE/WID Violation of a DOE Safety Incident Reporting Regulation DOE Order 5000.3B - Occurrence Reporting and Processing System (ORPS)

The second article is titled WIPP Team Cleans Up Lab Spill dated 6/22/94. This article notes the following:

> A laboratory container leak at the Waste Isolation Pilot Plant near Carlsbad Tuesday prompted the evacuation of about 100 employees while the WIPP emergency response team cleaned the spill and removed it from the facility.

The 100 milliliter - about 3.38 ounces - container of dimethyldichlorosilane was discovered on its side in a closed laboratory refrigerator at about noon Tuesday in the analytical laboratory. . .

Page 5 of 9

NM Ct. App., Case No. 20,980
[Record Proper - 002027]

> The Employees in the building were evacuated as a safety precaution at about 2 p.m., . . .

The former CAO manager, George Dials, sent us home that day (6/21/94) shortly after we evacuated the building. DOE Order 5000.3B requires reporting of "off-normal" incidents and/or those which may be the cause of "external interest." When I attempted to convince several coworkers, involved with the DOE's ORPS at the WIPP, that the lab spill incident should be reported, I was treated with great hostility. One coworker tried to justify this cover-up because the analytical lab was in the same building as office space. This coworker stated to me that "office space occurrences are excluded" from reporting to the DOE's ORPS. So this is supposed to mean that if an office space catches fire and kills two dozen people, the incident does not get reported even as an "off-normal" event with the DOE's ORPS ? This is preposterous. Another coworker told me that the
incident was being reported on a DOE weekly Operations Report. Neither of the excuses noted above, however, justify the clear violation of the DOE safety incident reporting regulation.

The DOE's CAO and WID violated this regulation, to cover-up material facts related to a minor safety incident, which is a report that is internal to the DOE only. The article in the Carlsbad Current Argus about the WIPP spill was right next to an article titled Explosion Rips Chemical Plant concerning a very similar chemical to the WIPP chemical.

The other article noted that "at least 39 people" were injured, and that it forced "closing one of the nation's busiest highways." Do you not think that all of this clearly demonstrated some "external interest" and that it just might be considered an "off-normal" event to require DOE ORPS reporting ? This is another example of the CAO and WID's disregard for regulations meant to protect the safety of WIPP workers, New Mexico residents, and the environment.

Conclusion

The DOE and WID have long held the practice at the WIPP of denying and covering-up all material facts leading to concerns of environmental, health and safety issues with the project. This is unfortunately a matter of fact due to such a powerful propensity of DOE and WID managers to engage in such cover-ups. There are serious and harmful effects concerning this practice such as the problems noted with the WIPP's operation, the Environmental Protection Implementation Plan (EPIP), the WIPP Environmental Monitoring Plan (EMP), and the RH-72B shipping cask. These safety risks, environmental law violations, and violations of the New Mexico Hazardous Waste Act (NMHWA) must be brought to a halt by the New Mexico Environment Department (NMED) and New Mexico State Attorney General. Otherwise, the DOE and WID will give no thought to doing so until people are killed or the environment suffers serious damage which people become aware of after it is too late.

I have provided documented evidence of the violation and potential additional violation of the NMHWA. Section 74-4-4.2 D notes that :

"The secretary may deny any permit application . . . pursuant to the Hazardous Waste Act if the applicant or permittee has:

(4) exhibited a history of willful disregard of environmental laws of any state or the United States . . ..
(6) violated any provision of the Hazardous Waste Act . . ..

Ref. also 74-4-13 , Imminent Hazards.

Page 6 of 9

NM Ct. App., Case No. 20,980
[Record Proper - 002028]

T. ROCKEFELLER WIPP PROJECT DECLARATION

I have provided substantial evidence to support my allegations that the DOE and WID have violated the Clean Air Act, a Mine Safety and Health Administration safety regulation, Title 18 United States Code, Section 1001, and have created Imminent Hazards for the residents of New Mexico with the operation of the WIPP Project. Due to this, it would seem very appropriate for the NMED Secretary to "commence a civil action in district court for . . ." an "injunction" towards the operation of the WIPP Project. Also, assessment of a civil and/or criminal penalty towards the DOE and WID, and issuance of a Compliance Order to address all validated violations of the NMHWA. The WIPP RCRA Part B Permit should also be suspended pending resolution and completion of all of the above.

If the WIPP Project does go into active operation, it must do so only with open and honest sharing of all relevant information with encouragement to all individuals involved to do so. This is essential to the protection of New Mexico residents and the environment.

The information that I have given, is confidential and it may not be shown to any individual(s), other than those to whom I have made distribution to, without my prior written consent. In accordance with 28 U.S.C. § 1746 and 18 U.S.C. § 1001, I declare under penalties of perjury that the above statements are true and correct to the best of my knowledge, information and belief.

This is the 1st day of September, 1998

s/Tod N. Rockefeller
319 Sunnyview St.
Carlsbad, NM 88220
(505) 887-7461
nohardrock@cavemen.net

NM Ct. App., Case No. 20,980
[Record Proper - 002029]

T. ROCKEFELLER WIPP PROJECT
DECLARATION

INDEX OF ATTACHMENTS

A-1 4/18/96 RH-72B SARP draft Comment Resolutions Review - Bolt Issue

A-2 Round 1 Questions, RH-72B SARP/ WID draft Comment Resolutions (with my working notations)/ O-ring Issue

B. Outline of Attempts to Issue CAO Corrective Action Report 97-001, then 97-007. 10/21/96 Version of draft CAR 97-001 Included

C. Draft/Final Excerpts of the WIPP Environmental Monitoring Plan for CY 1996 (WIPP RCRA Part B Permit Application Appendix D-5)

D. 4/26/95 CAO Assessment Report/ WID's 5/18/95 Response/ 11/3/95 Ltr. To CAO Legal Counsel

T. ROCKEFELLER WIPP PROJECT

DECLARATION

CERTIFICATE OF SERVICE

I certify that the attached documentation was sent via regular mail, unless otherwise indicated below, this 3rd day of September, 1998 to each of the following:

Peter Maggiore, Secretary; R. Mertz, Counsel; S. Zappe; NM Environment Depart.P.O. Box 26110 Santa Fe, NM 87502 (505) 827-1561

Thomas Udall, NM State Attorney General, also Lyndsay Lovejoy & Geoff Fettus P.O. Drawer 1508 Santa Fe, NM 87504-1508 (505) 827-6695

Caron Balkany & Suzanne Westerly, Concerned Citizens for Nuclear Safety 107 Cienega St. Santa Fe, NM 87501 (505) 986-1973

Janet Greenwald & Pia Gallegos, Citizens for Alternatives to Radioactive Dumping 144 Harvard SE Albuquerque, NM 87106 (505) 266-2663

Don Hancock, Southwest Public Information & Research Center P.O. Box 4524 Albuquerque, NM 87106 (505) 262-1862

Edward Slavin, Jr., Attorney 35 SE 8th Terrace Deerfield Beach, Florida 33441 (954) 725-0094

s/Tod N. Rockefeller
319 Sunnyview St.
Carlsbad, NM 88220
(505) 887-7461

ATTACHMENT A-1

To APPENDIX - 7

United States Government Dept. of Energy

Carlsbad Area Office

memorandum Carlsbad, NM 88221

Date: APR 18 1996

Reply to
ATTN of: CAO: AT: **TNR** 96-0951

Subject: CAO Review of WID's Draft Comment Resolutions to Round 1 Questions on the Safety Analysis Report for Packaging (SARP) for the Remote-Handled Transuranic Waste Packaging, Model 72-B.

To: D.E. Watkins, Acting Team Leader, CAO National TRU Programs

I have pointed out where some of Westinghouse's Waste Isolation Division's (WID's) draft comment resolutions will create serious delay problems with the approval of this SARP. Fourteen comments have not been resolved by WID.

In some cases, as in comment number 2.17, the draft resolution communicates uncooperativeness. I think that it is essential to this process that the **deficiencies**, which I have pointed out, be addressed before these draft resolutions are submitted to the primary evaluators (Argonne National Laboratory, East [ANL-E]).

It is certain that ANL-E and DOE Headquarters will assure that all of their comments are thoroughly resolved before they pass the SARP on to the Nuclear Regulatory Commission for final approval.

s/Tod Rockefeller
Environmental Scientist
CAO Assurance Ream

1 attachment

cc:
Kent Hunter, CAO
Bob Spooner, CAO
Mike Brown, CAO
J.J. Garcia, WID

WASTE ISOLATION PILOT PLANT (WIPP) CARLSBAD AREA OFFICE

DOCUMENT REVIEW RECORD

DOCUMENT NAME: Draft Comment Resolutions to the Safety Analysis Report For Packaging for the RH72-B Shipping Cask

REVISION: - -

DOCUMENT DATE: March 27, 1996

REVIEWER: T. Rockefeller

REVIEW INSTRUCTIONS/ACCEPTANCE CRITERIA:
1. Take note of all issues brought up and address each fully.
2. Formulate planning and responses to be complete so that further questions do not arise.
3. Take into consideration other areas which could be affected.

FORWARD RESULTS TO: Bob Spooner

COMMENTS DUE BY: As agreed

Com No.	Comment
1.4	Comment not addressed (see attached)
1.22	see attached
1.27	Resolution Incomplete (see attached)
2.1	Same as 1.4
2.3	Comment not addressed (see attach.)
2.5	Comment not addressed (see attached)
2.17	Comment not addressed (see attached)
3.2	Comment not addressed (see attached)

Com No.	Comment
3.7	TYPO
3.11	Comment not addressed (see attached)
3.17	Comment not addressed (see attached)
7.2	Comment not addressed (see attached)
9.1	Comment not addressed (see attached)
9.2	Resolution needs clarification (see attach.)

s/Tod Rockefeller Date: 4/16/96

Attachment to

CAO Review of Proposed WID Responses to the RH72-B SARP Comments

16 APRIL 96

1.4 The comment requires that "components of the packaging are designed, fabricated, examined, and tested to the applicable ASME Code requirements." Referencing a document that in turn makes further references with no direct link to specific components provides no useful information. This is not being evaluator friendly and demonstrates a lackadaisical attitude.

1.22 Reference to where "limits for allowable external temperature and radiation levels" can be found is not provided.

1.27 The comment notes inclusion of the welding specification as an Appendix to Chapter 1 in the SARP. This is not addressed.

2.3 The NUREGs state that the appropriate Parts of 10 CFR provide the "regulatory basis" for each guide. Ref. NUREG/CR 7.10 Section A dtd. 6/86.

The resolution notes that "the purpose of NUREG /CR-1815 is not to preclude defects, but to ensure that any material flaws will not propagate cracks and result in sudden, catastrophic failure." It is also stated that the requirements of "71.85(a) are ensured through the application of a NRC-approved QA system." NUREG/CR-1815 establishes "critical flaw size" related to "fracture-critical components."

I agree that the **RH72-B bolting** is not a "fracture-critical component" with the applied material property requirements. The redundancy of the bolting in this application agrees with that categorization. My agreement, however, is contingent upon assurance of high quality material, as specified, for the production of the bolts. If the quality of the material or heat treatment involved was questionable, this condition could affect the RH72-B cask's effectiveness especially under a worst-case scenario. The 10 CFR Part 71.85(a) notes that "no cracks, pinholes, uncontrolled voids, or other defects which could significantly reduce the effectiveness of the packaging" be present. An "approved QA system" does not insure this as structured in this SARP.

All of the bolting has been categorized as "Category B" material in the SARP. Ref. 1.2.4.7.1 and Table 1.2.4.7-1. For "Category B" materials "procurement of materials need not be from the Approved Suppliers List" and that "traceability of materials is not required." Conversely, Table 1.2.4.7-1 requires material certifications for the "Category B" bolting material from non-approved suppliers. I do not agree with this methodology for assuring the quality of the bolting material, especially with consideration of the counterfeit fasteners issue. Even if the chance of the bolts or raw material used being counterfeit was slim or remote, I do not believe it is worth taking chances.

My suggestion dated 11/22/95 (attached) directed towards resolving this comment, minus the Charpy Impact Transition Curve, would be valuable here if not ignored again.

2.5 The comment notes that "the initial temperature difference between the outer cask and the lead will range from 50 F to 250 F at the time of the lead pour" and that "this issue needs to be addressed."

Stating that "thermal stresses in the cask shells are minimized through the carefully controlled fabrication techniques of the lead pour process" and that "post-fabrication inspections . . . are carried out to further ensure that any fabrication-induced distortions . . . are not in excess of the toleration limits" do not address the issue. What has been asked for is for some detail concerning how fabrication stresses will be minimized during the lead pour. What are these "carefully controlled fabrication techniques" . . . a moderate level of detail is being requested, not very general promises. The resolution to 2.12 provides specific detailing. Why is there such a drastic difference between resolutions? Is it not very important to resolve all of the comments expeditiously?

2.17 The comment notes "for example", that means more than one. To address only the one "example" provided is like an insult to the evaluators. Dealing with the evaluators in this manner, I stress very highly, is most definitely what must never be done!

3.2 The comment notes that "the maximum allowable decay heat and hydrogen gas generation rate limits . . . are given for only five content codes."

"The SARP has not explained . . . how these codes represent the bounding condition for all of the permissible contents." The resolution makes a promise to expand the codes in the future. This is not an "explanation". A "worst-case" code should be estimated to establish a "baseline analysis" as done for the shielding analysis in 5.1.

3.11 The comment notes "maximum allowable decay heat limits for all the permissible contents." The resolution deals only with five content codes in Table 3.4.4.4-4. As in 3.2 a "baseline analysis" would resolve this comment.

7.2 The catch-all response of reference to the NRC's approval of the SARP for the TRUPACT-II without any specific references is no resolution of this comment. Additionally, the NRC is not performing the primary evaluation of this SARP. Perhaps, however, if a few specific examples were related from the TRUPACT-II SARP, that may be adequate for resolving this comment.

9.1 The SARP Quality Level Categories originate from the "Vectra QA Program" and not the CFRs. See the explanation within 2.3 for why this comment has not been addressed.

9.2 The lead obtained for producing the shielding is Quality Level B, while the vendor making the lead pour is an Approved Supplier or Quality Level A would possibly resolve this comment.

1 attachment

ATTACHMENT
To 4/16/96 RH-72B SARP Review

United States Government Dept. of Energy

Carlsbad Area Office

memorandum Carlsbad, NM 88221

Date: NOV 22 1995

Reply to
ATTN of: CAO: WST: TNR 95-2961

Subject: Comments made towards the Safety Analysis Report for Packaging (SARP) on the 72B RH-TRU Cask.

To: Todd Burrington, TRU Waste Program, WID.

To address the comment contained within paragraph 2.3 of Chapter 2, Structural, the following could be applied:

Each material or heat lot certification of raw stock utilized for the manufacture of all of the bolting material for the 72-B RH TRU waste shipping cask shall be thoroughly tested. This testing shall include those tests that ensure adequate ductility and strength while also providing assurance that the material is 100% defect free.

The required testing, for each material certification, shall consist of a Charpy Impact Transition Curve to establish that the temperature at which nil-ductility occurs satisfies

the requirements of NUREG / CR-1815. Also, the performance of room temperature Tensile and Charpy Impact testing shall establish that the ultimate tensile, ductility and toughness characteristics are appropriate for each application.

Additionally, when each heat lot of raw material is purchased for manufacture of the bolting hardware, 100% ultrasonic flaw detection testing can be stipulated as a requirement from the supplier. An appropriate size of defect can be noted for the reject level for this testing to ensure compliance with NUREG / CR-1815 and corresponding ASME Boiler and Pressure Vessel Code.

Lastly, after completion of the final machining of the bolting material, a Liquid Penetrant Inspection (LPI) can be performed. This LPI testing would detect any surface defects resulting from machining or handling. These kind of material inspections are routinely performed to satisfy the U.S. Navy's Level I Subsafe requirements and will adequately guarantee the quality of the 72-B cask bolting material.

s/Tod N. Rockefeller
Environmental Specialist

cc:
Bob Spooner, CAO
Kent Hunter, CAO
Denny Brown, CAO

What follows below is a hand written notation applied to the bottom of the November 22, 1995 U.S. Government Memorandum directly above. This notation was made to this Memo and included as part of Tod N. Rockefeller's 1/14/99 written Technical Testimony concerning the NM State permitting proceedings. (NM Ct. App., Case No. 20,980) This notation stated:

> Two work days subsequent to the date of this letter, which was 11/27/95, I was reassigned to the CAO's Quality Assurance (QA) group, the "CAO Assurance Team." Within this new "Team", I was not assigned functions other than **Clerk duties**. American taxpayers were 'shelling out' $ 60,000 a year for a Clerk.
>
> s/Tod N. Rockefeller
> Dated: 1/14/99

This reassignment of Petitioner Rockefeller was a typical example of the United States Department of Energy's (DOE's) retaliations against him for identifying safety-related problems. The DOE's retaliations culminated in Petitioner's removal from federal service on 12/10/99 for putative "poor performance". The work demonstrated within Attachment A-1 above is a highly technical and expert review of the SARP for the Model RH-72B nuclear waste shipping cask.

ATTACHMENT A-2
To APPENDIX - 7

The relevant portions of this exhibit contain the following:

Facsimile Transmittal Sheet
Dated: **11/14/95**

Seal: DEPARTMENT OF ENERGY
UNITED STATES OF AMERICA

OFFICE OF FACILITY SAFETY ANALYSIS, EH-32

To: Bob Spooner, Fax No.: 505 / 887-0707
Phone: 505 / 234-7474, Subject: 72B,
No. of Pages: 16

From: Ashok Kapool, Phone: 301 / 903-6838
Fax No.: 301 / 903-9691, UNCLASSIFIED
FACSIMILE

Hand Written Note:

Bob

Final Round 1 Questions.
If any questions, please call me.
Thanks.

Ashok

U.S. DEPARTMENT OF ENERGY
19901 GERMANTOWN ROAD
GERMANTOWN, MD 20874

11/14/95 301/903-9691

ATTACHMENT
Round 1 Questions
Safety Analysis Report for Packaging
Model 72-B, RH-TRU Waste Package
Docket 95-19-9518

Chapter 1, General Information and Drawings

The following 2 questions address the Packaging Quality Assurance Requirements of 10 CFR 71, Subpart H.

1.1 Make the SARP a controlled document in accordance with 10 CFR § 71.113.

1.2 Provide in the SARP lists of all drawings and specifications with revision number as required in 10 CFR § 71.113 for document control.

The following 2 questions address the NRC Design Guidance for Type B Packagings plus the requirements in 10 CFR § 71.37(b), § 71.85(a), and § 71.119.

1.3 Section 1.2 of Chapter 1 should provide . . ..

Chapter 2, Structural

2.16 Provide information on the magnitude of motions that the O-rings can tolerate without resulting in reduction in the degree of leak tightness that they can maintain. Provide the basis for this magnitude.

2.16 cont'd Show that the movements that will be experienced by the container lid relative to the container body will be less than this magnitude.

Westinghouse Electric Corporation
Government Operations

WD:96:02051 HA:96:04553
Waste Isolation Division (WID)
Box 2078
Carlsbad, NM 88221 **March 27, 1996**

Mr. D.E. Watkins, Acting Team Leader
National TRU Programs
Carlsbad Area Office
U.S. Department of Energy
P.O. Box 3090
Carlsbad, NM 88221-3090

Subject: Round 1 Questions on Safety Analysis Report for the Remote-Handled Transuranic Waste Packaging, Model 72-B, Docket 95-19-9518

Dear Mr. Watkins:

The WID is providing the draft resolution for Round 1 Questions on the Safety Analysis Report for Packaging (SARP) for the Remote-Handled Transuranic (RH-TRU) Waste Packaging, Model 72-B, Docket 95-19-9518. It is requested that the draft resolutions be distributed to the DOE reviewers for immediate consideration. The draft resolutions outline either a direct response to each question or the revision plan that states how the final documentation will be changed to answer the

question raised. In parallel, the revised SARP pages and drawings are being prepared in accordance with draft resolutions. This approach is being implemented to expedite the final revisions and complete the review process of the SARP.

If during the review of the draft resolutions a question arises, please feel free to contact us by phone or if warranted, we will provide expertise to the reviewers location to aid in question resolution.

s/Wayne H. Caplinger

RH-TRU 72-B Q1 Resolutions
(Draft Resolutions)

Author/Editor: Westinghouse - WID
Reviewer: U.S. DOE - Round 1 Questions
Date: March 22, 1996
Project No. 763434.01.04
Page 22 of 47
Report Title : SARP, Model 72-B, RH-TRU Waste Package (Docket 95-19-9518), Revision 0, December 1994.

Comment No. 2.16 : Provide information on the magnitude of motions that the O-rings can tolerate without resulting in reduction of leak tightness . . ..

Resolution: The Inner Vessel closure seal configuration consists of three O-ring bore seals, each located on a different diameter of the IV lid. . . . In order to determine the minimum compression which may occur on the IV containment O-ring, the largest tolerance stackup on the lid, flange, and O-ring groove dimensions will be utilized. . . .

The minimum possible residual O-ring compression is thus [(0.272 - 0.232)/0.272] x 100% = 15 %.

During Mr. Rockefeller's 4/16/96 review of the draft resolution for Comment 2.16, he applied his hand written working notes of his findings on this page (22 of 47) which were as follows:

> No margin for safety regarding leak tightness of O-rings.
> E.g.: Min. possible O-ring compression is 15 %. Min. residual compression req'd to maintain leak-tight sealing capability is 15 %. No margin for error. Actual dimensions establish the min. O-ring compression to be 14 % !

Mr. Rockefeller was not allowed, by the DOE, to be part of the resolutions (after 4/18/96) to his own comments and inquiries.

ATTACHMENT B

To APPENDIX - 7

EPA "Deposition", Attach. B Index

Waste Isolation Pilot Plant (WIPP)
Project Problem Area

The DOE's Carlsbad Area Office (CAO)
Misrepresentation to the EPA

*Clean Air Act - Faulty Radionuclide Air Monitoring
(Attach. B-16)

Attachments

1. My 4/22/94 review of the "Draft" WIPP Land Mgm't Implementation Plan.
   This is an early demonstration of the problem area and my attempt at correction.

My letter dated 12/19/96 - Cancellation of CAO Corrective Action Report (CAR)
97-007 (formerly 97-001). This was "Issue III" of my 6/6/97 Whistleblower report.

4. E-Mail concerning the EPA Audit of the CAO's QA Program dtd. 12/17/96.

5. My handwritten revisions of the 12/11/96 version of CAR 97-007 to address the 7th Round or last CAO effort to prevent my issue of this CAR.

6. 12/11/96 version of CAO CAR 97-007.

6. My request to Ms. Lee Chism of the CAO Assurance Team (CAO-AT) for a new CAR number after Mr. Denny Brown (CAO-AT Team Leader) had reassigned 97-001.

7. 12/10/96 version of 97-001 with the CAO's 6th Round of required changes.

8. This version of 97-001 shortly prior to 12/10/96 was noted to require a change of the "Response Due Date" (the 96 should be 97). Between "7" & "8" Mr. Brown came up with additional required changes noted on this version (Round 5).

9. 11/1/96 version of 97-001 with the CAO's 4th Round of required changes.

10. 10/21/96 version of 97-001 with the CAO's 3rd Round of required changes.

11. Corrected version of the cover letter to issue the CAO CAR 97-001 dtd. 10/21/96.

12. Unmarked 10/21/96 version of CAR 97-001. (**ATTACHED**)

13. The CAO's 2nd Round of required changes dated 10/21/96 for the draft CAR submitted prior to 10/17/96.

14. My response dated 10/18/96 to the CAO's 1st Round of required changes or "Draft CAR Review Comments".

2. The CAO's 1st Round of required changes dated 10/17/96.

3. WIPP Environmental Monitoring Plan (EMP) Draft and Final Version Excerpts.
The final EMP had the air monitoring 'radon cool-down' omitted without my knowledge.
(see Attachment C - below)

Tod Rockefeller
former Environmental Scientist
WIPP Site Team,
Carlsbad Area Office,
U.S. Dept. of Energy

EPA 1/5/98 " Deposition" Attachment B -12

United States Department of Energy

CORRECTIVE ACTION REPORT

1. CAR No. 97-001 2. Activity Report No: -
3. Page 1 of 1

4. Controlling Document: CAO Information Mgmn't Plan (IMP) CAO - 94 - 1 dtd. April 1994.

5. Affected CAO Team Leader: Wayne Walker

6. Responsible Organization: WID

7. Discussed With: Dave Kump, Max Bennet & Hardy Bellow.

8: Requirements: The CAO Information Management Plan (IMP) CAO - 94 - 1001 dtd. April 1994 contains the current requirements for document control of all DOE / WIPP reports or plans.

9. Conditions Adverse to Quality:

a. The content of section 5.2.1 of the WIPP Environmental Protection Implementation Plan (EPIP), DOE / WIPP - Draft - 2199, is inconsistent with the section title. E.g.: 5.2 Radiological Effluent Monitoring; 5.2.1 Effluent Monitoring - Liquid Releases: the content of this section discussed Non-radiological liquid effluents only. In addition, radiological liquid effluent monitoring was discussed nowhere else within the EPIP. This is in violation of the CAO IMP Section 1.5.5 which states that "CAO documents should show clarity of expression and consistency of format."

b. WID's current procedure for controlling their documents, WP 15 - 102, contains references to WP 15 - 103 and 15 - 104, which were superseded in 1994. This is in violation of the CAO IMP Section 1.5.11 which states that: - - - .

c. The CAO IMP requires that a review form (similar to IMP Fig. 1-6) be included with draft DOE / WIPP plans or reports. Also, the distribution / review / approval cycle must be recorded on a form (similar to IMP Fig. 1-4) with a CAO approval signature. Neither of these requirements were fulfilled for the recent drafts of the EPIP or the Environmental Monitoring Plan.

d. IAW section 1.5.11 of the CAO IMP : "When a superseding document is issued , a statement to that effect must appear on the title page." This was not done for DOE / WIPP - Draft - 2199 and DOE / WIPP 96 - 2194.

e. The WP 15 - PS manual replaced the "WIPP Documentation Plan" WP 15 -1 in June 1994, yet there is a binder in the CAO set of controlled documents with a label and status sheet within it noting: "WIPP Documentation Plan", "WP 15 -1", "As of 08/02/96 ". Also, the WID Index notes WP 15 -101 as being "replaced by 15 - PS 3001, 2, & 3." The procedure 15 - PS 3001 does not exist. This is in violation of Section 1.5.11 of the CAO IMP which states: - - - .

10. Suggested Actions: A thorough review of requirements contained within the CAO IMP and past / current documentation control practices should be completed to formulate a corrective action plan to assure compliance with the IMP.

12. Applicable Types of Actions: Remedial: _X_ , Investigative: _X_ , Root Cause: _X_ , Actions to Preclude Recurrence: _X_ .

13. CAR Initiator : s/Tod Rockefeller

Date: 10/21/96

14. Response Due Date : 11/22/96

15. Concurrence : s/Wayne Walker ,
Affected Team Leader
Date: 10/21/96

s/Thomas J. Reese ,
for Assurance Team Leader
Date: 10/21/96

What follows below is a hand written notation applied to the bottom of the 10/21/96 Corrective Action Report directly above. This notation was made to this CAR and included later as part of Tod N. Rockefeller's 1/14/99 written Technical Testimony concerning the NM State permitting proceedings. (NM Ct. App., Case No. 20,980) This notation stated:

> The deficiencies that I outlined above clearly demonstrate that the WIPP contractor's Quality Assurance Program was quite ineffective. The DOE's Carlsbad Area Office (CAO) went to great lengths to prevent my issue of this report in order to cover-up these material facts from the EPA.
>
> s/Tod Rockefeller Date : 1/18/99.

ATTACHMENT C

To APPENDIX - 7

The relevant portions of this exhibit contain the following:

DRAFT Version of the

DOE Waste Isolation Pilot Plant (WIPP)

Environmental Monitoring Plan (EMP)

DOE / WIPP 96 - 2194

Section 5.3.2 :

Effluent Monitoring - Airborne Emissions

4th Paragraph -

After Transuranic waste is received at the WIPP, filters (samples) from the systems at Stations A, B, and C will be collected (at two cubic feet per minute)
each working day, and counted for gross alpha and beta activity, after a 72-hour period to allow for the decay of radon progeny. Selected effluent air samples will be analyzed for specific radionuclides on site (Table 5 - 2) or at an off-sit lab if significant gross alpha or beta activity is indicated.

FINAL Version of the

DOE Waste Isolation Pilot Plant (WIPP)

Environmental Monitoring Plan (EMP)

DOE / WIPP 96 - 2194

Section 5.3.2 :

Effluent Monitoring - Airborne Emissions

4th Paragraph -

After Transuranic waste is received at the WIPP, filters (samples) from the systems at Stations A, B, and C will be collected (at two cubic feet per minute) each working day, and counted for gross alpha and beta activity. ** Selected effluent air samples will be analyzed for specific radionuclides on site (Table 5 - 2) or at an off-sit lab if significant gross alpha or beta activity is indicated.

** " after a 72-hour period to allow for the decay of radon progeny. " (OMITTED)

s/TR (Tod Rockefeller)

Date : 5/30 97

ATTACHMENT D
To APPENDIX - 7

The relevant portions of this exhibit contain the following:

United States Government Dept. of Energy

Carlsbad Area Office

memorandum Carlsbad, NM 88221

Date: APR 26 1995

Reply to
ATTN of: CAO: TNR 95-1198

Subject : Assessment of WID Hazardous Waste Operations.

To : Warren Bodily, Manager,
Environmental Programs, WID

Please respond to the five items outlined on the attached report within thirty calendar days from the above date. Please provide detailed explanations and / or proposed corrective actions where appropriate. If you have any questions, please do not hesitate to call me on extension 7447.

s/Tod Rockefeller
Environmental Scientist

Attachment
cc w/o attachment:
K. Hunter, CAO
D. Brown, CAO
D. Robertson, WID

Attachment

CAO ASSESSMENT / PROGRAM
REVIEW REPORT

Date of Activity : 3/23 & 3/24/95

Assessor : Tod Rockefeller

Activity Description : Review of WID hazardous waste operations and Satellite Accumulation Areas (SAAs).

Observations / Findings :

3. Revision of 02-601, Nonradiological Hazardous Waste Management, is handled in a confusing manner. E.g.: there were 13 individual changes made to this procedure, including hand written markings, prior to its first revision.

---

4. Satellite Accumulation Area (SAA) No. 7 B (underground) , which stores flammables , had no fire extinguisher within sight or a sign directing an operator to one.

5. ---

6. ---

7. ---

Westinghouse Electric Corporation
Government Operations

WD:95:03323 DA:95:2348
Waste Isolation Division (WID)
Box 2078
Carlsbad, NM 88221 May 18, 1995

Mr. V. Daub, Manager
Office of National TRU Waste Operations
U.S. Department of Energy
Carlsbad Area Office
P.O. Box 3090
Carlsbad, NM 88221-3090

Subject : Review of WID Hazardous Waste Operations and Satellite Accumulation Areas

Reference : Letter from Mr. T. Rockefeller to Mr. W. H. Bodily, CAO:TNR 95-1138, dated April 26, 1995, Subject, "Assessment of WID Hazardous Waste Operations"

Dear Mr. Daub :

Attached is the response to observations / findings noted during a review of the hazardous waste operations and Satellite Accumulation Areas (SAAs) performed on March 23 and 24, 1995.

If you have any questions regarding this matter please contact Mr. W. H. Bodily at extension 8990.

s/L. R. Fitch, Manager Environment, Safety, Health, and Regulatory Compl.

Attachments

WID Attachment to

May 18, 1995 Letter Above

Observation / Finding :

2. Satellite Accumulation Area (SAA) No. 7 B (underground) , which stores flammables , had no fire extinguisher within sight or a sign directing an operator to one.

Response :

WP 06 - HM 3109, Nonradiological Satellite Waste Accumulation Area Inspection, Attachment 1, states " Fire extinguisher and spill control materials are available in the area. "

A fire extinguisher is located at the intersection of the E 300 / N 260 drift. This fire extinguisher is visible from Satellite Accumulation Area No. 7 B .

Satellite Accumulation Area No. 7 B was permanently deactivated on May 12, 1995.

United States Government Dept. of Energy

Carlsbad Area Office

memorandum Carlsbad, NM 88221

Date : NOV 03 1995

Reply to

ATTN of : CAO: WST: TNR 95-2926

Subject : CAO Review of WID RCRA Hazardous Waste Operations.

To : Cooper Wayman, Legal Counsel, Carlsbad Area Office

Within each of the following four areas, concerning RCRA regulated nonradiological hazardous wastes generated at the WIPP Site, I have become aware of weaknesses. Due to the potential for liabilities, even those that are relatively minor, to arise the nature of the WIPP Project points out that these activities would be a productive direction for the CAO to place consideration and concerns.

1. Operations : Satellite Accumulation Area (SAA) No. 7 B (underground), which stored flammables , had no fire extinguisher within sight or a sign directing and operator to one. Ref. CAO Assessment Report dated 4/26/95 (TNR 95-1138).

   WID's response dated 5/18/95 did not address this noncompliance properly. They did not acknowledge the deficiency, investigate the root cause, or offer corrective action to prevent recurrence of this safety - related issue.

2 Procedures : WID's revision of 02 - 601, Nonradiological Hazardous Waste Management. Revision of this procedure was handled in a confusing manner. WID's procedure Change Process WP 15 - PS 3003 and WP 13 - 1 allow " minor " handwritten changes to be made without the procedure progressing to the next revision level.

Thirteen handwritten changes were applied to this procedure prior to its revision. Some of the changes were illegible and lacked direction as to where they were being applied.

Also, most of these changes did not meet WID's own definition of being " minor ". Ref. WP 13 - 1 also CAO : TNR : 95 - 1138.

3. ----------

4. ----------

s/Tod N. Rockefeller

Environmental Scientist